

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.,
Plaintiff, Counter-defendant,
v.
APPLE INC.,
Defendant, Counterclaimant.

Case No. 4:20-cv-05640-YGR-TSH

**OBJECTIONS TO CERTAIN SPECIAL
MASTER DETERMINATIONS
REGARDING REDACTED
DOCUMENTS**

The Honorable Thomas S. Hixson
San Francisco Courthouse
Courtroom E - 15th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

Dear Magistrate Judge Hixson,

Pursuant to Section 4 of the Joint Stipulation and Order Approving Privilege Re-Review Protocol (Dkt. 1092) (the “Protocol”) and the Order Amending the Protocol to extend the time for Epic to object to determinations regarding redacted documents (Dkt. 1352), Epic respectfully submits the following Objections to certain of the Special Masters’ privilege determinations, pertaining to documents that were produced to Epic in redacted form on March 11, 2025.

Epic recognizes the significant burden of these objections and is sensitive to the Court’s observation regarding the diminishing utility of similar or duplicative documents following the completion of the Evidentiary Hearing from February 24-26. Epic is therefore limiting its objections below to documents that it believes may meaningfully supplement the already extensive record established at the hearing to preserve the proper redactions for the exhibits used at the hearing.

Epic of course cannot “see underneath” the redactions and therefore is unable to fully assess the utility and privileged nature of the redacted text; however, Epic has, to the best of its ability, focused these challenges on the documents with privilege log entries and surrounding context to support an inference of utility and an improper assertion of privilege.

Epic respectfully requests that the Court review the following documents *in camera* and, where appropriate, reject Apple’s privilege assertions pertaining to these documents, in whole or in part.

Emails Primarily Involving Non-Legal Personnel

PRIV-APL-EG_00086914 is an email from Jeff Wilder, an economist at Apple, to Charles Paillard, Apple in-house counsel, copying Timothy Kim, Head of Business Planning and New Initiatives for the App Store, and Apple counsel Ling Lew, Brendan McNamara and Sascha Schubert. The subject of the email suggests it is a business-focused follow-up with Mr. Kim regarding the Digital Markets Act (“DMA”) in Europe.

The redacted text follows a summary by Jeff Wilder of the “options” available after the “Phil call”—presumably referencing a call with business executive Phil Schiller. During the hearing, much testimony was elicited about Apple’s perceived options in responding to the Court’s Injunction, so this redacted text appears of particular relevance. Moreover, Apple’s privilege log states the redacted content concerns developer outreach related to the U.S. Link Entitlement, a business topic. And, Apple, in its privilege log, only asserted privilege over legal advice provided by Ling Lew, and not any other lawyer. Epic sees no basis in the privilege log or in the document to justify the redactions here—at least not in their entirety; it appears highly unlikely that Mr. Wilder is conveying such extensive legal advice from Ling Lew, yet does not even mention Ms. Lew in the opening of his message.

PRIV-APL-EG_00087094 is an email from Isaac Rubin, a speechwriter at Apple, to Ann Thai, Worldwide Product Director of the App Store, and one attorney, Sean Cameron. Non-attorneys Fred Sainz (a member of Apple’s communications team) and Mr. Kim, as well as Carson Oliver, a key witness in the hearing, are copied. The email subject is “Download with PS”—presumably referencing a meeting with Mr. Schiller that, in all likelihood, would not be dedicated solely to legal advice, given that neither Mr. Schiller nor the author of the message are attorneys. Moreover, Apple’s privilege log describes the document as “providing information for the purpose of obtaining legal advice from counsel”. Although Mr. Sainz’s email was directed to Mr. Cameron, redactions covering several entire pages of an email with multiple business personnel seem overbroad.

Email Seeking Approval from Business Executives

PRIV-APL-EG_00255622 is an email from Mr. Cameron to Apple counsel Jennifer Brown and Ms. Lew. Non-lawyers Trystan Kosmynka, Mr. Oliver and Ms. Thai are copied on the email. Epic has already challenged redactions in what appears to be a different version of this email chain. (*See* Dkt. 1354 at 2.) For this document, Apple’s privilege log claims the “redacted text reflect[s] legal advice from counsel regarding injunction compliance requirements for link format and buttons”. But starting at bates ‘5264, the email chain contains several redacted pages of messages from nonlawyer, Mr. Schiller. Mr. Schiller’s business opinion on link format or buttons is not legal advice and it is highly unlikely that Mr. Schiller has three pages consisting entirely of a request for legal advice. Epic sees no basis in the document or the privilege log justifying these overbroad redactions.

DATED: March 17, 2025

CRAVATH, SWAINE & MOORE LLP
By: /s/ Yonatan Even
Counsel for Plaintiff Epic Games, Inc.